Supreme Court, U. S.
FILED
JAN 10 1979
MICHAEL RODAK, JR., CLERK

No. 78-858

In the Supreme Court of the United States

OCTOBER TERM, 1978

DONALD H. MATHES AND PATRICIA MARIE MATHES,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-858

DONALD H. MATHES AND PATRICIA MARIE MATHES, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners seek review of the decision below holding that they are required to report at its full face value income received in the form of federal reserve notes, and that they were not entitled to a jury trial in the Tax Court.

The pertinent facts may be summarized as follows: During 1973, petitioners received gross income of $21,795, consisting of wages and dividends, which they reported on their joint federal income tax return for that year (R. 137).[1] On May 19, 1975, petitioners filed a second income tax return for 1973, which they denominated "Amended 5-19-75 for Statutory Dollars," and on which the gross income reported amounted to $8,873.20 (R. 30). According to petitioners, they made this reduction in the amount

[1] "R." refers to the record appendix filed in the court of appeals.

of their income (Pet. App. 33-42) to reflect the fact that federal reserve notes are not "statutory dollars" because a dollar is statutorily defined as a specific weight either of gold or of silver. Petitioners applied the same reduction in reporting income on their 1974 return (R. 45-58). On audit, the Commissioner of Internal Revenue determined that petitioners were not entitled to reduce their income in this manner and were therefore taxable on the full face amount of their incomes for 1973 and 1974 (R. 20-25).

On May 9, 1977, petitioners filed a motion for a jury trial in the Tax Court, which was denied (R. 72). The Tax Court upheld the Commissioner's determination (R. 292-300), and the court of appeals affirmed (Pet. App. 28-29).

1. Petitioners assert (Pet. 3-15) that federal reserve notes are not dollars. But the power and intention of Congress to establish a national currency in the form of federal reserve notes, and to tax income received in that form, are not open to serious dispute. See, *e.g.*, *Juilliard* v. *Greenman*, 110 U.S. 421, 448 (1884); *Milam* v. *United States*, 524 F. 2d 629, 630 (9th Cir. 1974); *Gajewski* v. *Commissioner*, 67 T.C. 181, 193-195 (1976). Every appellate decision that has considered the contention that federal reserve notes are not "dollars" for purposes of the tax laws has rejected the claim as frivolous. See *e.g.*, *United States* v. *Schmitz*, 542 F. 2d 782, 783-784 (9th Cir. 1976), cert. denied, 429 U.S. 1105 (1977); *United States* v. *Kelley*, 539 F. 2d 1199, 1203 (9th Cir.), cert. denied, 429 U.S. 963 (1976); *United States* v. *Wangrud*, 533 F. 2d 495, 496 (9th Cir.), cert. denied, 429 U.S. 818 (1976); *United States* v. *Gardiner*, 531 F. 2d 953, 955 (9th Cir.), cert. denied, 429 U.S. 853 (1976); *United States* v. *Daly*, 481 F. 2d 28, 30 (8th Cir.), cert. denied, 414 U.S. 1064 (1973).

2. Petitioners further contend (Pet. 16-24) that they were entitled to a trial by jury in the Tax Court by virtue of the Seventh Amendment to the United States Constitution. There is, however, neither a constitutional

nor a statutory right to a jury trial in the Tax Court. *Phillips* v. *Commissioner*, 283 U.S. 589, 599 n.9 (1931); *Wickwire* v. *Reinecke*, 275 U.S. 101, 105-106 (1927); *Dorl* v. *Commissioner*, 507 F. 2d 406, 407 (2d Cir. 1974). See also *Atlas Roofing Co.* v. *Occupational Safety Commission*, 430 U.S. 442 (1977).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1979

DOJ-1979-01